

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of HJE Financial LLC,
James Hoffman, James Johnson, and
Ronald Esau

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION
WITH REGARD TO
HJE FINANCIAL, LLC

The above-entitled matter was scheduled for prehearing conferences before Administrative Law Judge Kathleen D. Sheehy on July 7, 2004, and August 24, 2004.

Michael J. Tostengard, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared on behalf of the Department of Commerce (Department). The Respondent, HJE Financial LLC, did not appear in person or by counsel at either prehearing conference. The record with regard to HJE Financial closed upon the Respondent's default on August 24, 2004. This matter remains pending with regard to James Hoffman, James Johnson, and Ronald Esau, the principals of HJE Financial, LLC, all of whom appeared in person or through counsel at the prehearing conferences.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Did Respondent HJE Financial, LLC, act as an unlicensed residential mortgage originator or make residential mortgage loans without first obtaining a license, in violation of Minn. Stat. § 58.04, subd. 1(a)?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 7, 2004, the Department sent the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges (Notice of Hearing) by first class mail to the Respondent at 1150 Northland Drive, Suite 101, Mendota Heights, Minnesota 55120. This is the address HJE Financial, LLC, used when registering with the Minnesota Secretary of State. The Department also sent a copy of the Notice of Hearing to the Respondent at 8220 Commonwealth Drive, Suite 140, Eden Prairie, MN 55344.

2. The Notice of Hearing advised the Respondent that failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the allegations made in the Notice of Hearing may be accepted as true, and the Department's proposed action upheld.

3. Respondent did not file a Notice of Appearance or contact the Administrative Law Judge to reschedule the prehearing conference.

4. The prehearing conference took place as scheduled on July 7, 2004. HJE Financial, LLC, did not appear. During the prehearing conference, the other parties—the Department, James Hoffman, James Johnson, and Ronald Esau—agreed to have settlement discussions, to be followed by another telephone prehearing conference on August 24, 2004, before scheduling a date for hearing.

5. On July 7, 2004, the Administrative Law Judge sent notice to all parties, including HJE Financial, LLC, of the next prehearing conference. Notices were sent to HJE Financial, LLC, at 1150 Northland Drive, Suite 101, Mendota Heights, Minnesota 55120, and 8220 Commonwealth Drive, Suite 140, Eden Prairie, Minnesota 55344. The post office returned the notices sent to HJE Financial, LLC, at both addresses, to the Office of Administrative Hearings as being undeliverable at those addresses.

6. The prehearing conference on August 24, 2004, took place as scheduled. All parties appeared except for HJE Financial, LLC. Counsel for the Department requested a default recommendation based on the Respondent's failure to appear. No party objected to the Department's motion to find HJE Financial, LLC, in default.

7. Because Respondent failed to appear at the prehearing conferences, it is in default.

8. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of Hearing at paragraphs 1-40, are taken as true with regard to HJE Financial, LLC, only, and are incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 58.04, subd. 1(a), and 45.027, subd. 6.

2. Respondent received due, proper and timely notice of the charges, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of its failure, without the Administrative Law Judge's prior consent, to appear at the prehearing conferences.

6. Respondent has acted as a residential mortgage originator or made residential mortgage loans without first obtaining a license from the Commissioner, in violation of Minn. Stat. § 58.04, subd. 1.

7. Disciplinary action against Respondent HJE Financial, LLC, is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce take action to bar Respondent from engaging in residential mortgage origination or servicing and/or impose a civil penalty upon Respondent pursuant to Minn. Stat. §§ 58.12, subd. 1(1) & (4) and 45.027, subd. 6.

Dated this 25th day of August, 2004.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default (no tapes)

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.